

Dylan B. Carp (State Bar No. 196846)
 Travis Raymond (State Bar No. 268543)
 Jackson Lewis LLP
 199 Fremont Street, 10th Floor
 San Francisco, California 94105
 Telephone: (415) 394-9400
 Facsimile: (415) 394-9401
 E-Mail: carpd@jacksonlewis.com

Mia Farber (State Bar No. 131467)
 Jackson Lewis LLP
 725 South Figueroa Street, Suite 2500
 Los Angeles, California 90017-5408
 E-Mail: farberm@jacksonlewis.com

Attorneys for Defendant
 MILGARD MANUFACTURING INCORPORATED

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

JOHN FOUTS, an individual,

 Plaintiff,

 v.

 MILGARD MANUFACTURING
 INCORPORATED, a Washington
 corporation, and DOES 1-25, inclusive,

 Defendants.

CASE NO.: C 11-06269 HRL

**DECLARATION OF BARBARA
 MOTLEY IN SUPPORT OF
 DEFENDANT MILGARD
 MANUFACTURING
 INCORPORATED'S MOTION TO
 COMPEL ARBITRATION**

Complaint Filed: July 29, 2011

I, Barbara Motley, declare that:

1. I am employed by Milgard Manufacturing, Inc. ("Defendant") as its Director, Human Resources and Employee Relations. In this capacity, I am responsible for overseeing and providing human resources services to Defendant. As a result, I am familiar with the employment status of its employees and the personnel files of Defendant's current and former employees. Accordingly, I have personal knowledge of the facts contained herein. If called as a witness to testify, I could and would competently testify to each of the facts set forth herein.

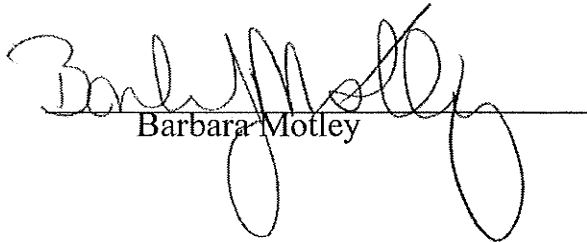
2. Plaintiff John Fouts ("Plaintiff") has been employed in California by Defendant from November 5, 2003 to the present.

1 3. A true and correct copy of Defendant's Dispute Resolution Policy
2 signed by Plaintiff and dated November 3, 2003 is attached as Exhibit A.

3 4. Plaintiff received commission on top of his base salary; medical, dental, and
4 vision coverage; life insurance; paid holidays; vacation; a flexible spending account;
5 401k with profit sharing and employer matching; and the use of a company cell phone,
6 vehicle, and laptop computer. Additionally, Plaintiff was eligible for, and often received,
7 trips to Maui for top sales representatives, annual bonuses, and a one-time \$6,000 training
8 bonus.

9 I declare under penalty of perjury under the laws of the United States of America
10 that the above is true and correct.

11 Dated: February 14, 2012


Barbara Motley

12 4833-5531-6750, v. 1
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Dispute Resolution Policy

Differences occasionally arise between the Company and a current or former employee (all references to "employee" within this Policy include current and former employees). In most instances, these differences have been resolved through the Company's Open Door Policy or through informal discussions. However, in those rare instances where informal discussions and the Company's internal procedures do not produce a satisfactory result, litigation has been the only recourse to resolve the matter. Unfortunately, the litigation process is costly to all parties and is most time consuming. The Company believes there is a better and more efficient method to resolve those disputes that cannot be resolved informally. That method is a two-step dispute resolution mechanism of mediation and arbitration that are independent, fair, and equitable to all parties.

Under this Policy, which is a condition of continued employment and binding upon the Company and the employee, all claims and disputes between the Company and the employee within the United States arising out of the employee's employment or termination, which are not resolved through the Company's Open Door Policy and other normal human resource channels, shall be resolved through mediation and, if necessary, binding arbitration. The mediation and arbitration will be conducted by a neutral third party, the American Arbitration Association.

Claims Covered by this Policy

Except as noted below, the disputes covered by this Policy include any claim the Company might have against the employee. Also included is any claim under applicable state or federal law an employee within the United States might have against the Company including, for example, all claims for: wages or other compensation due; breach of any contract; violations of public policy; negligence; intentional torts; any alleged exception to the workers' compensation laws; defamation; all forms of unlawful discrimination including, but not limited to, race, color, sex, religion, national origin, disability, marital status or age; denial of fringe benefits; violation of any federal, state, or other governmental law, statute, regulation, or ordinance; and, any other matters arising under common or statutory law. Disputes covered by this policy shall also include any claim an employee might have against any officer, director, employee, or agent of the Company, or any of the Company's subsidiaries, divisions, and affiliates, if that claim in any way arises out of or relates to the employment relationship or the termination of the employment relationship. It is the intent to submit to mediation and arbitration to the fullest extent permitted by law all disputes an employee might have against the Company and any of its subsidiaries, divisions, affiliates, officers, directors, employees, and agents. Because this Policy promotes mediation and arbitration as the exclusive remedy for claims covered by this Policy, the Company and the employee agree to be bound by those laws best promoting the enforceability of mediation and arbitration agreements, including the Federal Arbitration Act, federal common law, and any applicable state laws promoting arbitration.

Claims Not Covered by this Policy

The only employee claims not covered by this Policy are those the employee might have for workers' compensation benefits pursued through a state administrative agency, unemployment compensation benefits, and claims under any of the Company's employee welfare benefit and pension plans. In the case of a denial of benefits under any of the Company's employee welfare

benefit or pension plans, the filing and appeal procedure contained in those plans must be utilized.

Also exempt from this Policy are claims for injunctive or equitable relief the Company might have against an employee to: enforce non-competition agreements; enforce non-solicitation agreements; protect, directly or indirectly, the Company's trade secret(s), proprietary information, confidential information and other Company property; and protect the Company's business reputation.

Also exempt will be any dispute, which, in an express written agreement between the Company and the employee, specifically provides for a judicial or other remedy.

Applicable Mediation and Arbitration Rules

The American Arbitration Association (AAA) is a public service, nonprofit organization that offers a wide range of independent, unbiased dispute resolution services to private individuals, businesses, associations and all levels of government. Because of the experience of the AAA in mediating and arbitrating disputes, the Company and its employees will be subject to the AAA Employment Dispute Resolution Rules (as amended and effective on January 1, 2001) and this Policy. Copies of the AAA rules may be obtained from the Company's Human Resources Department.

Mediation

If a dispute arises between the Company and the employee that cannot be resolved through the Company's Open Door Policy or other internal human resource channels, the Company and the employee must first attempt to resolve the dispute through mediation by the AAA.

Arbitration

If the dispute is not resolved through mediation, the dispute shall be resolved by exclusive, final and binding arbitration by the AAA before a single, neutral Arbitrator knowledgeable in employment law who shall follow applicable state and federal law and whose decision shall be final and binding upon both the Company and the employee. Judgment upon an award rendered by the Arbitrator may be entered in any court having jurisdiction.

Fees and Expenses

As a benefit to employees, the Company will pay all of the expenses and fees of the Mediator. The Company will also pay the AAA's mediation administrative fees. The Company will pay all of the expenses and fees of the Arbitrator. The Company will also pay the AAA's arbitration administrative fees.

Right to Representation

The employee has the right to be represented by an attorney during any phase of the mediation and arbitration proceedings. The expenses of such representation shall be the sole responsibility of the employee.

Time Limits

To insure the timely resolution of disputes, the Company or the employee must initiate mediation as soon as practicable. In no event may either the Company or the employee request arbitration more than one year after the time the claim accrued or, in the case of a claimed statutory violation, the time limits imposed by the applicable statute of limitations, whichever is longer. The failure to request arbitration within this time limit will forever bar any claim involving that dispute.

Administrative Conference

To permit the consideration of any issues and procedures that will expedite the arbitration in a fair and equitable manner, at the request of either the employee or the Company, an Administrative Conference with the AAA will be held. Unless agreed to in writing by the parties, all outstanding disputes that either the Company or the employee might have against the other will be decided by the Arbitrator in the same proceeding.

Arbitrator

The Arbitrator will be independent and impartial and no person shall serve as an Arbitrator who has any financial or personal interest in the result of the proceeding. The Arbitrator shall promptly disclose in writing to the parties and the AAA any circumstances that would prevent the Arbitrator from acting independently and impartially. Either party may request the disqualification of an Arbitrator for the same reasons as a federal district court judge is subject to disqualification under federal law. When an Arbitrator has been challenged by either party, the other party may agree to the challenge or the Arbitrator may voluntarily withdraw. If neither agreed disqualification nor voluntary withdrawal occurs, the challenge shall be promptly decided by the AAA and its decision shall be final and binding.

In selecting an Arbitrator, the AAA shall be required to send each party an initial list of ten potential Arbitrators. If for any reason an appointment cannot be made from this list, the AAA shall promptly send each party a second list of ten potential Arbitrators. If for any reason an appointment cannot be made from the second list, the AAA shall have the power to make an appointment from among other members of the panel without submitting an additional list.

If for any reason an Arbitrator is unable to perform the duties of the office, the AAA may declare the office vacant and the vacancy will be filled according to the procedures for the initial appointment of an Arbitrator.

Discovery

The parties are encouraged to agree upon the extent of discovery which shall take place prior to the arbitration hearing. Discovery shall be conducted in the most expeditious and cost-effective manner possible, and shall be limited to that which is clearly relevant and material to the dispute and for which the party has a substantial, demonstrable need. Upon request, either party shall be entitled to receive at least thirty days prior to the arbitration hearing, information and copies of documents which meet the criteria for discovery. Upon request, the parties shall be entitled to take one deposition each at least thirty days in advance of the arbitration; the parties will designate that individual whom they wish to depose but the individual must have direct knowledge of the issues in dispute.

Any disputes regarding discovery shall be decided by the Arbitrator and the Arbitrator may grant, upon good cause shown, either party's request for discovery in addition to or limiting that expressly provided in this Policy.

Record

To insure that both parties have an opportunity to review a record of the arbitration, the Arbitrator will maintain, in cooperation with the parties, a record of the arbitration proceedings for a period of one year after the Arbitrator's award is issued. The record is to include at a minimum all documents and exhibits produced in connection with the hearing, all briefs submitted by the parties, the award of the Arbitrator, a record of the arbitration hearing, and the written decision of the Arbitrator. A record of the arbitration hearing shall be made by audio, video taping, or by verbatim transcription, at the election and expense of the Company. All aspects of the arbitration, including the record, are confidential and not open to the public except to the extent both parties might otherwise agree in writing, the record is necessary for any subsequent proceeding between the parties, or the record is necessary to respond to an order of a governmental agency or legal process.

In conducting the arbitration hearing, technical compliance with the rules of evidence shall not be necessary. However, applicable law with respect to privilege, including attorney-client privilege, work product, and compromise and offers to compromise must be followed.

Damages and Relief

Upon a finding that either the employee or the Company has sustained the burden of persuasion as to a legally cognizable claim, the Arbitrator shall have the same power and authority (and no more) as would a judge in court to grant monetary damages or such other relief as may be in conformance with applicable principles of common, decisional, and statutory law in the relevant jurisdiction. Both parties have a duty to mitigate any damages that might have been sustained.

Employment Status

This Policy does not in any way alter the "at-will" status of an employee's employment. Nothing in this Policy will limit an employee's right to resign from the Company, or the Company's right to terminate the employee's employment for any reason at any time.

Location

Unless otherwise agreed to by the parties, any mediation or arbitration will take place at the AAA office closest to where the dispute arose.

Non-Retaliation

The Company is committed to resolving legitimate disputes quickly and reasonably. The Company forbids any retaliation against any employee who in good faith pursues a dispute under this Policy.

Change, Modification or Discontinuation

The terms of this Policy in effect at the time of the facts giving rise to the dispute took place are the terms which will be binding on the Company and the employee. Otherwise, the Company reserves the right to change, modify or discontinue this Policy at any time upon prior written notice to the Company's current employees.

Additional Information

Any employee seeking information concerning the operation, meaning or application of this Policy may contact the Company's Human Resources Department.

QUESTIONS AND ANSWERS

What is the Open Door Policy and under the Dispute Resolution Policy who do I talk to first if there is a problem?

The Company has a long history of encouraging open communications as a means of solving problems. If an employee has a problem, concern, or suggestion for improving any phase of the business operation, the Company has always promoted a discussion of the matter between the employee and the employee's immediate supervisor. For example, the Company's written policies affirmatively encourage the immediate reporting of any unlawful harassment or discrimination. If the employee has not been satisfied with the supervisor's response, or if the employee is unable to discuss the matter with the supervisor, the employee has always been encouraged to contact the Human Resources Department to help bring about a quick and appropriate resolution of any problem. The Company's Open Door, Equal Employment Opportunity and Sexual Harassment Policies, for example, underscore the importance the Company places upon open communications as the best method for resolving problems. The Dispute Resolution Policy does not affect the Company's commitment to open communications between you and the Company. In fact, the Dispute Resolution Policy underscores the importance of the long-standing policy of open discussion as the first and best avenue for dealing with any problem.

Which employees are covered by the Dispute Resolution Policy?

All non-unionized full-time and part-time employees of the Company are covered by the Open Door and Dispute Resolution Policies -- there are no exceptions. As a condition of continued employment all covered employees, as well as the Company, will be required to follow this Policy and are bound by its terms.

Why was the Dispute Resolution Policy developed?

Although infrequent, occasionally disputes arise between current and former employees of the Company which cannot be resolved through normal Human Resource channels or the Company's Open Door Policy. When those disputes do arise, litigation in the Courts has been the only recourse to the resolution of those disputes. Trials in the Courts and with juries are often very long, drawn out, and expensive procedures for both the employee and the Company. Even after a Court or a jury renders a decision, if the employee or the Company is dissatisfied by the result, either party can appeal to yet another Court which will result in further delay and expense. Unfortunately, when these disputes are finally over the only real "winners" are oftentimes the trial attorneys who represented the employee and the Company.

The Company believes there are better and more efficient methods to resolve those disputes that cannot be resolved informally through normal Human Resource channels and the Open Door Policy. Instead of the delay and expense involved with the Courts and juries, the Dispute Resolution Policy calls for a two-step dispute resolution process of mediation and arbitration which are independent, fair, and equitable to all parties. By relying upon independent Mediators and, if necessary, neutral third party Arbitrators, disputes will be resolved more quickly, efficiently, and involve far less expense than resolution of those disputes with Courts, juries, and attorneys.

When is the Dispute Resolution Policy effective?

The policy has been effective since 1997.

In the Dispute Resolution Policy, the American Arbitration Association is identified. What is the American Arbitration Association?

The American Arbitration Association is a nationwide, independent, non-profit agency which has a long history of providing dispute resolution services to businesses, governmental agencies, corporations, and private parties. Because of the experience of the American Arbitration Association, and its reputation for independence and neutrality, it was selected as the independent, outside agency for the Dispute Resolution Policy.

What is Mediation?

Mediation is a proceeding held before a neutral, third party, a Mediator, who is appointed by the American Arbitration Association. In this process, the Mediator helps to open up lines of communication and makes recommendations of possible ways of resolving the dispute but does not hand down a final decision. Any recommendations made by the Mediator are not binding and either the employee or the Company is free to accept or reject the recommended resolution. If either party rejects the recommendation, the dispute will proceed to Arbitration should either party desire to pursue the matter further.

What is Arbitration?

Arbitration is a process by which the parties to a dispute present evidence to a neutral, third party, the Arbitrator, who is appointed by the American Arbitration Association. Unlike Mediation, the procedure for the presentation of the dispute is more formal -- the Arbitrator will hear evidence from witnesses, review exhibits introduced at the hearing, and listen to the arguments of the parties. After receiving all the evidence and evaluating the dispute, the Arbitrator will issue an award. This award will be final and binding on both the Company and the employee.

Will a Court ever decide any dispute covered by this Policy?

No; this Policy is the sole and exclusive remedy for all covered disputes. Under the Policy, any covered dispute which cannot be resolved through normal Human Resource channels will first be resolved through Mediation and, if necessary, decided by an independent Arbitrator. The Arbitrator's decision will be final and binding upon you and the Company. The Company and you have agreed that courts and juries will not become involved in deciding any disputes covered by the Policy. Neither you nor the Company will be able to have the ruling of the Arbitrator decided, overturned, or reviewed by a jury. Moreover, a judge cannot overturn the decision of an Arbitrator simply because the decision is believed by you or the Company to be unsatisfactory. Under unusual circumstances a decision made by an Arbitrator can be appealed to a court, however, judges will very rarely overturn the decision of an Arbitrator. The net result is a procedure that is far less expensive and time consuming and much more efficient.

How does arbitration differ from a court trial?

An arbitration proceeding is held before an Arbitrator instead of a judge and a jury. An arbitration proceeding is generally much less formal than a court case. An arbitration proceeding will usually be held in a private office instead of a public courthouse. The Arbitrator will usually be a former judge or a lawyer experienced in the law who serves as a neutral arbitrator on a full-time or part-time basis. Each party may call and cross-examine witnesses and introduce documents supporting their position during arbitration, however, unlike a trial, strict rules of evidence and technical legal rules governing procedure are not followed. With Arbitration the decision is final; except under rare circumstances, the decision of the Arbitrator may not be reversed by subsequent proceedings. With a court or jury decision, an appeal may be filed causing lengthy delays of months and possibly years. Because it is faster and far less formal, arbitration is also less expensive. Also because the procedures are far less formal and technical, oftentimes the parties do not hire attorneys. Arbitration ends up costing both parties much less.

Is there any limit on the award that can be obtained through arbitration?

No. If either party believes a right has been violated, the Arbitrator will determine if a legally protected right has indeed been violated and, if so, will determine the amount that can be recovered. The Arbitrator has the same authority as a judge or jury in the applicable jurisdiction in making monetary awards and granting relief.

Can either party have a lawyer present during the Mediation and Arbitration proceedings?

Yes. Either party may consult with an attorney prior to the Mediation and Arbitration hearing, and, if desired, the attorney may be present at any time during the Mediation and Arbitration. Each party is solely responsible for the cost of any attorney who might be retained.

Will I still be able to go to the Equal Employment Opportunity Commission or any other state or federal agency to complain about a problem?

Yes. The Dispute Resolution Policy applies only to relief you might seek personally through the courts for a dispute. You are still free to consult with and file charges with the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, or any other appropriate state or federal regulatory body regarding workplace disputes. The Company believes, however, that its internal procedures will negate the need to go to any outside agencies to obtain a satisfactory resolution of any workplace problems that you might have.

Who pays the costs of Mediation and Arbitration?

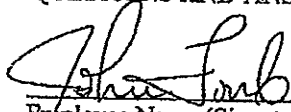
The Company will pay all of the costs and expenses of any Mediator or Arbitrator appointed by AAA. In addition to the fees and expenses of the Mediator, the Company will also pay all of AAA's mediation administrative expenses and all of AAA's arbitration administrative expenses. AAA is an independent organization and the Arbitrators and Mediators selected by AAA are not affiliated with the Company in any way. Even though the Company is paying the fees and

expenses of the mediation and arbitration process, any Mediator or Arbitrator appointed will be impartial.

How soon must arbitration be requested?

Normally within one year. If either party believes a legally protected right has been violated, the Dispute Resolution Policy encourages the resolution of the dispute as quickly as possible. Employees should, as soon as possible, attempt to resolve disputes informally through normal Human Resource channels and the Open Door Policy. If the matter cannot be resolved the employee may then request mediation under the Dispute Resolution Policy. If the matter is still unresolved, and the employee desires to pursue arbitration, the employee must request arbitration within one year of the time the claim accrued, unless a statutory right is involved. In the case of a statutory right, the employee has the longer of one year, or the statute of limitations for the statutory right, to request arbitration.

I ACKNOWLEDGE RECEIPT OF THE DISPUTE RESOLUTION POLICY AND THE
QUESTIONS AND ANSWERS.



Employee Name (Signature)

11-3-03

Date

John Fouts

Employee Name (Please Print)